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BY ECF

MEMO ENDORSED

Hon. Richard M. Berman
 United States District Court
 Southern District of New York
 500 Pearl Street
 New York, NY 10007

Re: Gershkovich v. Iocco, et al.
 15 Civ. 7280 (RMB) DCF)

February 2, 2017

Pl can raise all appropriate issues within the confines of his opposition to Defs motion for S.J. (same schedule + same page limits).

SO ORDERED:

Date: 2/4/17

Richard M. Berman
 Richard M. Berman, U.S.D.J.

Dear Judge Berman:

We represent Alex Gershkovich. We write to address defendants' contention, contained in the February 1, 2017 letter of Joy T. Anakhu, Esq., that "Plaintiff has offered no explanation as to why he failed to adhere to the briefing schedule already set by the Court and now attempts to disrupt the schedule and also burden the Court due to his unexplained failure."

Mr. Gershkovich had no reason to move for summary judgment before receiving defendants' motion papers. Defendants ignore that they arrested and charged Mr. Gershkovich with trespass and Disorderly Conduct for actions he allegedly undertook while inside of 4 New York Plaza. As I shared with the Court at the November 22, 2016, Mr. Gershkovich disputes (and overwhelming evidence demonstrates) that he was ever inside 4 New York Plaza. Given this fundamental material dispute, plaintiff did not have a good faith basis to move for summary judgment. Thus, as we noted in our February 1st letter, we did not have a basis to move for partial summary judgment until we received defendants' motion papers -- we will address the facts contained in Ms. Anakhu's letter regarding what transpired outside of 4 New York Plaza in our motion papers. Regarding plaintiff's anticipated motion to strike the Clark affidavit, we agree that it will be part of our motion papers -- whether or not the Court grants our application.

Thank you for your consideration of this request.

Respectfully submitted,

/s

Scott A. Korenbaum

SAK:sak

cc: All Counsel (by ECF)